

Atty. Docket No. 696.005

REMARKS

In the Office Action dated October 4, 2005, pending Claims 1-13 were rejected and the rejection made final. Applicants filed an Amendment After Final in response and received an Advisory Action dated March 2, 2006. The outstanding Advisory Action states that the proposed Amendment After Final would not be entered because the amendment made therein y would require further search and consideration. Thus, Applicants herewith file a Request for Continued Examination and submit the present Amendment.

In the Office Action dated October 4, 2005, Claims 1-13 were pending. Of these claims, Claims 1 and 13 are independent claims; the remaining claims are dependent claims. Claims 1 and 13 have been rewritten. Applicants intend no change in the scope of the claims by the changes made by these amendments. It should also be noted these amendments are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution.

Claims 1-13 stand rejected under 35 USC § 103(a) as obvious over Herz et al. (hereinafter "Herz") in view of Dahm et al. (hereinafter "Dahm"). Specifically the Office asserted that "[i]t would have been obvious ... implement Dahm's defunct threshold in Herz's customized price and promotion system. One would be motivated to set up a threshold value as taught in Dahm in order to predict a customer who is most likely to churn or discontinue the service, and provide a proper offer to retain such customers. It would be obvious to use Herz's profile attributes, such as the last interaction of the

Atty. Docket No. 696.005

customer with the web site, and set a threshold value to determine the probability that the customer would become a defunct." Reconsideration and withdrawal of the present rejections are hereby respectfully requested.

A 35 USC 103(a) rejection requires that the combined cited references provide both the motivation to combine the references and an expectation of success. Not only is there no motivation to combine the references, no expectation of success, but actually combining the references would not produce the claimed invention. Thus, the claimed invention is patentable over the combined references and the state of the art.

The present invention broadly contemplates enabling Internet businesses to utilize Internet transaction information to conduct real-time online experiments on a sample of transactions and determine marketplace sensitivities. (Page 6, paragraph 0024, lines 1-4) The results of these experiments are analyzed to reveal optimal values of key market decision variables. (Page 6, paragraph 0024, lines 4-6) These experiments are further used to determine profit potential of various promotions. The instant invention offers these promotions to online shoppers as an incentive to maintain a shopping relationship with online retailers and prevent an online shopper from becoming defunct.

As best understood, the invention set forth by Herz contemplates a system with the ability to automatically determine which products a shopper would be most likely to buy, and which offers a vendor should make available to the shopper in order to maximize the vendor's profit. (Paragraph 0002, lines 1-5) The system constructs and updates shopper profiles based on specific demographic information and history of their

Atty. Docket No. 696.005

shopping behavior. (Paragraph 0002, lines 5-9) These profiles are used to determine products and offers to present to shoppers. (Paragraph 0002, lines 9-13)

The outstanding Office Action takes the position that Herz teaches providing a promotion to the customer based on customer behavior. However, there is no teaching or suggestion that these promotions offered to the customer by Herz are based on real-time learning from promotional experimentation of various promotions offered to various consumers. It is respectfully submitted that Herz et al. clearly falls short of teaching certain attributes of the present invention (as defined by the independent claims) in that, *inter alia*, it does not disclose specifying a range of offers to be included in a set of promotions wherein the offers include optimal advertisements determined from real time learning from dynamic analyses of promotional experimentation.

As best understood, the invention set forth by Dahm contemplates providing subscriber loyalty and retention techniques that allow mobile telephone subscribers who have been identified as likely candidates to discontinue service and switch to another provider to efficiently review an offer for a mobile service plan that better meets subscriber needs. (Column 2, lines 20-25) Dahm uses billing records and/or demographic information to identify subscribers that may be likely candidates to switch providers. (Column 2, lines 33-35)

Dahm presents offers to those customers who appear to be leaving the mobile provider. These offers may be based on a historical data associated with the customer. However, there is no teaching or suggestion that these offers are based on real-time learning from promotional experimentation of various promotions offered to various

Atty. Docket No. 696.005

consumers. Any promotion offered to a consumer is not determined continually or in a real-time manner, as is evidenced by Dahm only periodically updating profiles or performing certain customer loyalty functions only in response to customer actions. Thus, it is respectfully submitted that Dahm clearly falls short of teaching the attribute of the present invention (as defined by the independent claims) to which it refers in that, *inter alia*, any promotion which Dahm may determine -- which may or may not be applicable to the instant invention or technically combinable with the teachings of Herz -- is not performed in real-time or continuously.

The instantly claimed invention requires specifically "specifying a permissible defunct threshold; specifying a range of offers to be included in a set of promotions wherein the offers include optimal advertisements determined from real time learning from dynamic analyses of promotional experimentation; determining a probability that a customer will become defunct after a predetermined period of time has occurred since the last interaction of that customer with the web site; and providing a promotion selected from the set of promotions to a customer if the probability that the customer will become defunct after the predetermined period of time has occurred since the last interaction of that customer with the web site is greater than the permissible defunct threshold; wherein the method is performed in real-time.". (Claim 1; other independent claims have similar language).

Neither Herz nor Dahm, nor the combination of the two, teaches specifying a range of offers to be included in a set of promotions wherein the offers include optimal advertisements determined from real time learning from dynamic analyses of promotional

Atty. Docket No. 696.005

experimentation. In actuality, the combination of Herz and Dahm teach away from specifying offers that are determined from real-time learning of dynamic analysis of promotional experimentation.

A 35 USC 103(a) rejection requires that the combined cited references provide both the motivation to combine the references and an expectation of success. Not only is there no motivation to combine the references, no expectation of success, but actually combining the references would not produce the claimed invention. Thus, the claimed invention is patentable over the combined references and the state of the art.

In view of the foregoing, it is respectfully submitted that independent Claims 1 and 13 fully distinguish over the applied art and are thus allowable. By virtue of dependence from Claim 1, it is thus also submitted that Claims 2-12 are also allowable at this juncture.

/

/

/

/

/

/

04-04-'06 22:17 FROM-

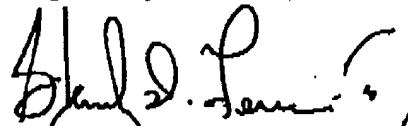
412-741-9292

T-502 P017/017 F-654

Atty. Docket No. 696.005

In summary, it is respectfully submitted that the instant application, including Claims 1-13, are presently in condition for allowance. Notice to the effect is hereby earnestly solicited. Applicants' undersigned attorney would welcome further discussion with the Office in the event there are any further issues in this application.

Respectfully submitted,



Stanley D. Ference III
Registration No. 33,879

Customer No. 35195
FERENCE & ASSOCIATES
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400
(412) 741-9292 - Facsimile

Attorneys for Applicants